Re MUTCHILIM *alias* ASHRHIN, DECD.; HAJI MAWAR v. ATTORNEY-GENERAL

[O. C. J. (Tan Ah Tah J.) January 12, 1960]

[Singapore — Originating Summons No. 141 of 1957]

Muslim Law — Intestate succession — Deceased leaving widow but no next-of-kin — Doctrine of Radd.

In this case the deceased died intestate leaving a widow but no next of kin. He belonged to the Shafi School of law. The question which arose for determination was whether the plaintiff as widow of the deceased was entitled to the whole of the estate or whether she was only entitled to ¼ share thereof while the ¾ remaining share accrued to the Crown.

Held: (1) in accordance with the law of the Shafi School the widow is entitled to only ¼ share of the estate and the doctrine of Radd does not apply to make her entitled to the balance of the estate;

(2) the remaining ¾ share escheated to the Crown.

Cases referred to:—

(1) *Mahomed Arshad Chowdhry* v. *Sajida Banoo* (1878) I.L.R. 3 Cal. 702.

(2) *Bafatun* v. *Bilaiti Khanum* (1903) I.L.R. 30 Cal. 683.

(3) *Mussamut Soobhanee* v. *Bhetun* (1811) 1 Sel. Rep., S.D.A. 346.

(4) *Collector of Masulipatam* v. *Cavaly* (1880) 8 Moo I.A. 498.

(5) *Re Timah binti Abdullah decd.* [1941] M.L.J. 51.

ORIGINATING SUMMONS.

N. A. Mallal for the plaintiff.

Ahmad Ibrahim (Sr. Crown Counsel) for the defendant.

Cur. Adv. Vult.

Tan Ah Tah J.: In this matter the plaintiff is the widow of Mutchilim alias Ashrhin who died intestate on the 6th May 1931. The plaintiff has deposed to the fact that the deceased died without any children or any other relation surviving him, and the matter must be dealt with on that basis. The question which arises for determination is whether the plaintiff as the widow of the deceased is beneficially entitled to the whole of his estate or whether she is entitled only to one-quarter share thereof while the remaining three-quarter share accrues to the Crown.

The deceased was a Muslim belonging to the Shafi School of Law. The principles of the Shafi School of Law are therefore applicable to this case which has to be determined in accordance with those principles.

According to the Muslim law of inheritance there are various classes of persons who are entitled to succeed to the property of a deceased person, but for the purpose of this case it is necessary to refer only to three of these classes. These are the sharers, the residuaries and the distant kindred. Sharers are those who are entitled to a prescribed share of the inheritance. Residuaries are those who take no prescribed share, but succeed to the residue of the property after the claims of the sharers are satisfied. Distant kindred are all those related by blood who are neither sharers nor residuaries.

The rule in ancient times was that in default of sharers and residuaries the deceased's property lapsed to the *Bait-ul-Mal* which may be described as a public treasury maintained for the benefit of the general body of Muslims. In course of time this rule was modified by a doctrine called the doctrine of Return or Radd. According to this doctrine, if there is a residue left after the claims of the sharers have been satisfied, but there is no residuary, the residue reverts to the sharers in proportion to their shares. This right of reverter is called Return or Radd. In the early history of the doctrine it was held that neither a husband nor a wife of the deceased was entitled to take by Return. However, a development took place in the Hanafi law of inheritance which resulted in the rule that when the deceased leaves no other heir who belongs either to the class of sharers by blood or distant kindred, the husband or wife, as the case may be, is entitled to succeed to the residue by Return. This development is illustrated by the case of *Mohamed Arshad Chowdhry* v. *Sajida Banoo* (1) the decision in which was followed in *Bafatun* v. *Bilaiti Khanum* (2).

In deciding the case of *Mahomed Arshad Chowdhry* v. *Sajida Banoo, supra,* the Court relied on the decision in *Mussamut Soobhanee* v. *Bhetun* (3) in which the opinion of Muslim jurists was taken. The authorities cited by the jurists in support of their opinion are stated to be the *Hemadya* and the *Zukheerali.* The matter is referred to in a footnote at page 279 of *Wilson's Anglo-Muhammadan Law,* 6th ed., in which a quotation from the *Hemadya* is set out. The footnote appears in that part of the text-book which deals in detail with the Hanafi law of inheritance. Neither the *Hemadya* nor the *Zukheerali* appear in any list of Shafi authorities in the leading text-books on Muslim law. It seems clear that they are authorities in the Hanafi School of Law and that the cases which have been decided in reliance on them must be treated as authorities in the Hanafi law of inheritance. In this connection the following passage from *Fyzee's Outlines of Muhammadan Law,* 2nd ed., at page 62 is apposite to this case:—

> "The usual practice in this sub-continent (i.e. India) is to use the terms 'Sunni' law or 'Shia' law. Strictly speaking, this is inexact; by the former is meant the Hanafi law and by the latter, the Ithna 'Ashari school of the Shi'a."

The position of the husband and wife in the Shafi law of inheritance, in relation to the matter under consideration, is referred to in the following passage from *Howard's* translation of *Van den Berg's* French translation of the *Minhaj et Talibin* at page 247:—

> "The primitive doctrine of our school did not allow cognates a share in the succession, and the heirs indicated in the Koran could never obtain more than their determinate portions. Consequently, in default of persons legally entitled to it, the remainder of the inheritance escheated to the state. For this reason modern authorities have introduced the rule that, in all cases where the public money is not administered in accordance with the law, the heirs indicated in the Koran, with the exception

of husband and wife, may, after receiving their respective portions and in default of other legitimate inheritors, demand that the remainder of the estate should be proportionately distributed amongst them. The state is even excluded by cognates, if the deceased has left no legitimate heir. By "cognates" are understood all relatives, except those already mentioned as legitimate heirs. They are of ten different kinds of relationship: (1) mother's father and, in general, any ancestor or ancestors who is not a legitimate heir or heiress; (2) daughters' children; (3) any brothers' daughters; (4) sisters' children; (5) uterine brothers' sons; (6) father's uterine brother; (7) father's brother's daughters; (8) father's sisters; (9) mother's brothers and sisters; (10) relatives of all these persons, male and female."

It is clear from this passage that at the time the *Minhaj et Talibin* was written neither the husband nor the wife of a deceased person who belonged to the Shafi School of Law was entitled to succeed to the residue of his property by Return. Among the books on Muslim law prescribed by the Muslims Ordinance, the *Minhaj et Talibin* is the only one which contains a definite statement on the point under consideration. Moreover, there is nothing to indicate that since the time the *Minhaj et Talibin* was written the Shafi law on the point has been altered or modified. I accept the statement contained in the *Minhaj et Talibin* as proof of the Shafi law on the point and hold that the plaintiff is not entitled to succeed to the residue of the deceased's property.

It was contended by counsel for the plaintiff that as there was no *Bait-ul-Mal* in Singapore the plaintiff was entitled to the three-quarter share of the deceased's property in addition to her own one-quarter share. On this point it is relevant to refer to section 265 of *Wilson's Anglo-Muhammadan Law*, and, in particular, the commentary at page 296. Section 265 and the commentary read as follows:—

Escheat to Government.

265. In default of all the successors above mentioned, the whole property of a Muhammadan dying intestate would in a Muhammadan State go to the *Bait-ul-Mal.*

By pure Muhammadan Law (Sir. 3) it would lapse to a fund called in Arabic the *Bait-ul-Mal* applicable to purely Muhammadan purposes, such as war against the infidel, the building of mosques, or the sustentation of poor believers. But the British Courts have refused to recognise the existence of any such fund, and have decided in substance that property for which there is no other claimant must necessarily be applicable to the general purposes of the Government. The leading authority for this principle is a Hindu case, *Collector of Masulipatam* v. *Cavaly*,[4] 8 Moo. I.A., 498 (1880) at p. 525; but inasmuch as it was applied there in the teeth of an express maxim of Hindu Law to the effect that the king shall in no case take the property of a Brahman, it must be applicable a *fortiori* to the case of Muhammadans, whose law contains no such maxim, but on the contrary expressly declares that the deposit in the Public Treasury is not by way of inheritance (*Sharifiyah*, 9, 10). The words of the Privy Council in that case were as follows: "When it is made out clearly that by the law applicable to the last owner there is a total failure of heirs, then the claim to the land ceases (we apprehend) to be subject to any such personal law; and as all property not dedicated to certain religious trusts must have some legal owner, and there can be, legally speaking, no unowned property, the law of escheat intervenes and prevails, and is adopted generally in all Courts of the country alike. Private ownership not existing, the State must be owner as ultimate lord."

The question who is entitled to succeed to the property of a deceased Muslim in the event of a total failure of heirs has also been considered in *Re Timah binti Abdullah deceased*,[5] In that case the deceased was a Japanese woman who had been converted to the Muslim faith. She died leaving a mother and brother who were not Muslims. At the time of her death she was domiciled in the State of Pahang where there was no *Bait-ul-Mal*. It was held that the deceased's mother and brother, being non-Muslims, had no right to inherit her property and that the State of Pahang was entitled to succeed to the whole of the estate.

It is to be observed that the plaintiff in the present case is not the deceased's next of kin within the meaning of section 16 of the Civil Law Ordinance (Cap. 24). Having regard to that fact, and to the principle set out in *Wilson's* commentary and, in effect, applied in *Re Timah binti Abdullah deceased, supra*, the three-quarter share of the deceased's property must, in my opinion, be held to have accrued to the Crown.

The answer to the question raised in this application is, therefore, that the plaintiff is beneficially entitled to one-quarter share of the deceased's estate while the remaining three-quarter share thereof has accrued to the Crown.

I am indebted to counsel on both sides for the assistance which they have rendered to the court in this matter.

By consent, the plaintiff's costs of these proceedings are fixed at the sum of $2,000. Counsel for the defendant having indicated that he is not asking for any order as to costs, no order is made as to the defendant's costs.

Order accordingly.

Solicitors: *Mallal & Namazie.*

KANAPATHY v. REGINA

[A. Cr. J. (Buttrose J.) September 2, 1959]

[Singapore — Magistrate's Appeal No. 31 of 1959]

Evidence — Conduct and behaviour — Hearsay — Admissibility — Objection to — Accomplice — Evidence Ordinance (Cap. 4), s.158.

Criminal law — Public servant — Conduct with reference to complainant's property — Penal Code (Cap. 119), s.165.

In this case the appellant, an Inspector of Police, was charged under section 165 of the Penal Code with accepting $50 without consideration from one Hanifa against whom a charge of attempted rape was withdrawn. The appellant was convicted by the District Judge and sentenced to 18 months' imprisonment.

The prosecution evidence disclosed that the complainant, Hanifa, a glazier employed by the Public Works Department was arrested by the appellant on October 3, 1957 on a charge of attempted rape and taken to the Joo Chiat Police Station. The appellant after questioning the complainant took from him his watch, gold wrist band and glass cutter while another police officer took the remainder of his property before putting him in the lock-